

**United States Department of Labor
Employees' Compensation Appeals Board**

A.K., Appellant)	
)	
and)	Docket No. 19-1210
)	Issued: November 20, 2019
DEPARTMENT OF JUSTICE, BUREAU OF)	
ALCOHOL, TOBACCO, FIREARMS &)	
EXPLOSIVES, Downers Grove, IL, Employer)	
)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On May 7, 2019 appellant filed a timely appeal from a November 9, 2018 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). As more than 180 days has elapsed from OWCP's last merit decision, dated July 25, 2018, to the filing of this appeal, pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board lacks jurisdiction over the merits of this case.²

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that following the November 9, 2018 decision, OWCP received additional evidence. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

ISSUE

The issue is whether OWCP properly denied appellant's request for reconsideration of the merits of his claim pursuant to 5 U.S.C. § 8128(a).

FACTUAL HISTORY

On May 29, 2018 appellant, then a 48-year-old special agent, filed a traumatic injury claim (Form CA-1) alleging that on May 21, 2018 he sustained head, back, and left side injuries when the vehicle he was operating hydroplaned, spun, struck a guardrail, and flipped while in the performance of duty. On the reverse side of the claim form, the employing establishment indicated that appellant was in the performance of duty at the time of the claimed employment incident.

In a development letter dated June 15, 2018, OWCP advised appellant of the deficiencies of his claim, informed him of the medical evidence needed to establish his claim, and afforded him 30 days to submit the necessary evidence.

In a report dated May 21, 2018, Dr. John S. Groch, a Board-certified diagnostic radiologist, administered a computerized tomography (CT) scan of appellant's head, neck, and cervical spine. A CT scan of his head revealed no acute fracture. A CT scan of his cervical spine revealed no acute fracture or dislocation, mild-to-moderate degenerative changes contributing to mild spinal stenosis, and scattered mild/moderate bilateral foraminal narrowing in the cervical spine.

In a report dated May 21, 2018, Dr. Jon P. Strotkamp, an osteopath Board-certified in emergency medicine, related that after the accident appellant was seen in the hospital emergency room. Appellant was able to ambulate, denied loss of consciousness, and reported pain on the side of his head and in his back. He related a primary impression of "[motor vehicle accident] restrained driver."

By decision dated July 25, 2018, OWCP denied appellant's traumatic injury claim finding that the evidence of record was insufficient to establish that his medical condition was causally related to the accepted May 21, 2018 employment incident.

On August 13, 2018 appellant requested reconsideration of OWCP's July 25, 2018 decision. Along with his request, he submitted duplicate copies of the May 21, 2018 reports from Dr. Groch and Dr. Strotkamp, previously submitted.

By decision dated November 9, 2018, OWCP denied appellant's request for reconsideration of the merits of his claim.

LEGAL PRECEDENT

Section 8128(a) of FECA does not entitle a claimant to review of an OWCP decision as a matter of right.³ OWCP has discretionary authority in this regard and has imposed certain

³ This section provides in pertinent part: [t]he Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application. 5 U.S.C. § 8128(a).

limitations in exercising its authority.⁴ One such limitation is that the request for reconsideration must be received by OWCP within one year of the date of the decision for which review is sought.⁵ A timely request for reconsideration, including all supporting documents, must set forth arguments and contain evidence that either: (i) shows that OWCP erroneously applied or interpreted a specific point of law; (ii) advances a relevant legal argument not previously considered by OWCP; or (iii) constitutes relevant and pertinent new evidence not previously considered by OWCP.⁶ When a timely request for reconsideration does not meet at least one of the above-noted requirements, OWCP will deny the request for reconsideration without reopening the case for a review on the merits.⁷

ANALYSIS

The Board finds that OWCP properly denied appellant's request for reconsideration of the merits of his claim pursuant to 5 U.S.C. § 8128(a).

In his timely application for reconsideration, appellant did not show that OWCP erroneously applied or interpreted a specific point of law, and he did not advance a new and relevant legal argument not previously considered.⁸ Consequently, he is not entitled to review of the merits of his claim based on the first and second above-noted requirements under 20 C.F.R. § 10.606(b)(3).

The Board notes that the underlying issue in this case was whether appellant's medical condition was causally related to the accepted May 21, 2018 employment incident. That is a medical issue which must be addressed by relevant medical evidence not previously considered.⁹ In support of his request for reconsideration appellant submitted duplicative copies of Dr. Groch's May 21, 2018 diagnostic report and Dr. Strotkamp's May 21, 2018 medical report. Evidence which repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case.¹⁰ In this case, appellant failed to submit relevant and

⁴ 20 C.F.R. § 10.607.

⁵ *Id.* at § 10.607(a). For merit decisions issued on or after August 29, 2011, a request for reconsideration must be received by OWCP within one year of OWCP's decision for which review is sought. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.4 (February 2016). Timeliness is determined by the document receipt date of the request for reconsideration as indicated by the received date in the integrated Federal Employees' Compensation System. *Id.* at Chapter 2.1602.4b.

⁶ 20 C.F.R. § 10.606(b)(3).

⁷ *Id.* at § 10.608(a), (b).

⁸ *R.S.*, Docket No. 19-0312 (issued June 18, 2019); *T.B.*, Docket No. 18-1214 (issued January 29, 2019); *C.B.*, Docket No. 08-1583 (issued December 9, 2008).

⁹ *R.S.*, *id.*; *D.L.*, Docket No. 16-0342 (issued July 26, 2016).

¹⁰ *R.S.*, *id.*; *D.T.*, Docket No. 17-1734 (issued January 18, 2018); *Richard Yadron*, 57 ECAB 207 (2005).

pertinent new evidence regarding causal relationship.¹¹ Thus, he is not entitled to a review of the merits of his claim based on the third requirement under 20 C.F.R. § 10.606(b)(3).¹²

Accordingly, appellant has not met any of the requirements of 20 C.F.R. § 10.606(b)(3). Pursuant to 20 C.F.R. § 10.608, OWCP properly denied merit review.¹³

CONCLUSION

The Board finds that OWCP properly denied appellant's request for reconsideration of the merits of his claim pursuant to 5 U.S.C. § 8128(a).

ORDER

IT IS HEREBY ORDERED THAT the November 9, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 20, 2019
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board

¹¹ *P.C.*, Docket No. 18-1703 (issued March 22, 2019); *M.H.*, Docket No. 13-2051 (issued February 21, 2014).

¹² *Id.*

¹³ *See R.S.*, *supra* note 8; *D.R.*, Docket No. 18-0357 (issued July 2, 2018); *A.K.*, Docket No. 09-2032 (issued August 3, 2010); *M.E.*, 58 ECAB 694 (2007); *Susan A. Filkins*, 57 ECAB 630 (2006).